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SENATE BILL 391

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO GAME AND FISH; AMENDING A SECTION OF CHAPTER 17,
ARTICLE 2 NMSA 1978 TO PROVIDE FOR LANDOWNER TAKINGS OF COVERED
SPECIES OR PREDATORS THAT THREATEN HUMAN LIFE OR PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 17-2-7.2 NMSA 1978 (being Laws 1997,
Chapter 224, Section 3) is amended to read:

"17-2-7.2. LANDOWNER TAKING--CONDITIONS--DEPARTMENT
RESPONSIBILITIES.--

~~[A. A landowner or lessee, or employee of either,
may take or kill an animal on private land, in which they have
an ownership or leasehold interest, including game animals and
other quadrupeds, game birds and fowl, that presents an
immediate threat to human life or an immediate threat of damage
to property, including crops; provided, however, that the~~

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1 ~~taking or killing is reported to the department of game and~~
2 ~~fish within twenty four hours and before the removal of the~~
3 ~~carcass of the animal killed, in accordance with regulations~~
4 ~~adopted by the commission.~~

5 ~~B. A landowner or lessee, or employee of either,~~
6 ~~may take or kill animals on private land, in which they have an~~
7 ~~ownership or leasehold interest, including game animals and~~
8 ~~other quadrupeds, game birds and fowl, that present a threat to~~
9 ~~human life or damage to property, including crops, according to~~
10 ~~regulations adopted by the commission. The regulations shall:~~

11 ~~(1) provide a method for filing a complaint to~~
12 ~~the department by the landowner or lessee, or employee of~~
13 ~~either of them, of the existence of a depredation problem;~~

14 ~~(2) provide for various departmental~~
15 ~~interventions, depending upon the type of animal and~~
16 ~~depredation;~~

17 ~~(3) require the department to offer at least~~
18 ~~three different interventions, if practical;~~

19 ~~(4) require the department to respond to the~~
20 ~~initial and any subsequent complaints within ten days with an~~
21 ~~intervention response to the complaint and to carry out the~~
22 ~~intervention, if agreed upon between the department and the~~
23 ~~landowner, within five days of that agreement;~~

24 ~~(5) permit the landowner or lessee to reject~~
25 ~~for good cause the interventions offered by the department;~~

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1 ~~(6) require a landowner or lessee to~~
2 ~~demonstrate that the property depredation is greater in value~~
3 ~~than the value of any wildlife-related income or fee collected~~
4 ~~by the landowner or lessee for permission to take or kill an~~
5 ~~animal of the same species on the private property or portion~~
6 ~~of the private property identified in the complaint as the~~
7 ~~location where the depredation occurred; and~~

8 ~~(7) permit the landowner, lessee or employee,~~
9 ~~when interventions by the department have not been successful~~
10 ~~and after one year from the date of the filing of the initial~~
11 ~~complaint, to kill or take an animal believed responsible for~~
12 ~~property depredation.~~

13 ~~G. For purposes of this section:~~

14 ~~(1) "commission" means the state game~~
15 ~~commission;~~

16 ~~(2) "department" means the department of game~~
17 ~~and fish; and~~

18 ~~(3) "intervention" means a solution proposed~~
19 ~~by the department to eliminate the depredation.]~~

20 A. A landowner or lessee, or an employee or agent
21 of either, or any other person may take or kill a predator that
22 presents an immediate threat to human life, livestock or family
23 pets; provided that the taking or killing is reported to the
24 department within twenty-four hours. The department shall
25 determine disposition of the carcass. Nothing in this

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1 subsection authorizes a taking in violation of the Wildlife
2 Conservation Act.

3 B. The department shall provide assistance to a
4 landowner, lessee or employee of either who requests assistance
5 in remedying or preventing reasonably anticipated damage to
6 property or physical harm to humans, livestock or family pets
7 caused by a covered species or predator. The request shall be
8 made in writing or to a toll-free telephone number to be
9 provided by the department. Within twenty-four hours of
10 receipt of a request for assistance, the department shall
11 consult with the complainant and make arrangements to conduct
12 an on-site investigation of the complaint. As soon as
13 reasonably possible, no later than fourteen days following the
14 investigation, the department shall offer its assistance and
15 reasonably available interventions that may include forage
16 leases, harassment, temporary fencing, population management
17 hunts or other appropriate interventions. The complainant
18 shall accept the department's assistance and implement or
19 permit the department to implement suggested interventions as a
20 condition to receiving damage compensation under a future claim
21 for damages to property caused by the covered species or
22 predator designated in the request for assistance. Refusal of
23 assistance or interventions shall not preclude future claims
24 for damage and payment for those claims if the claimant
25 provides the department with written good cause for refusal to

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1 accept assistance or interventions. As an intervention, and as
2 appropriate to on-the-ground circumstance, the department may
3 supply materials or other goods or services to the claimant.

4 C. Pursuant to Subsection B of this section, if a
5 landowner or lessee has suffered damage to property from a
6 covered species or predator, the landowner or lessee may, not
7 later than the next April 1, file a written claim on a form
8 provided by the department, verified under penalty of perjury,
9 that shall include:

10 (1) the date the damage occurred or was
11 discovered;

12 (2) the number and species causing the damage;

13 (3) the type of damage claimed;

14 (4) the date of initial request for assistance
15 from the department;

16 (5) the estimated dollar amount of the damage;
17 and

18 (6) the location of the damage.

19 D. The claimant shall provide evidence that the
20 damages for which the claim is submitted are not covered under
21 an insurance policy and that the claimant does not anticipate
22 receiving insurance compensation for damages claimed. The
23 claim shall also contain a statement that damage prevention
24 materials supplied by the department, if any, were used in an
25 effort to prevent or reduce the extent of the damage and were

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1 not used for any other purpose. The landowner or lessee must
2 advise the department on an ongoing basis of continuing damage
3 and whether the department-provided interventions are not
4 effective.

5 E. Damages shall not be awarded to a landowner or
6 lessee who, during the period of five years preceding the
7 claimed damage, has received state or federal funds for use in
8 the improvement or management of the real property on which the
9 damaged property is located solely for enhancement of the real
10 property as habitat for the damaging species of wildlife.

11 F. If the department agrees that the claim and the
12 amount of estimated damages are valid, the department shall
13 deliver to the landowner or lessee a written acceptance of the
14 claim and, when all claims submitted by April 1 have either
15 been accepted or adjusted, the claim shall be paid pro rata
16 with other accepted and adjusted claims from funds remaining in
17 the big game depredation damage fund at the end of the
18 department's fiscal year in which the claim was made.

19 Acceptance of that payment by the landowner or the lessee shall
20 release the department, the commission and the state from any
21 further liability for the claimed loss. Payments pursuant to
22 this section shall be reduced by an amount equal to ten percent
23 of the total payable damages.

24 G. If the department does not accept the claim by
25 disagreeing with either or both the claimed cause or the amount

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1 of the estimated damages, the claim shall be forwarded within
2 ten days of the department's refusal to an appropriate and
3 qualified state or federal agency or private claims adjustment
4 service provider contracted by the department for adjustment
5 pursuant to that entity's rules, regulations and standards for
6 valuing crops, livestock and other property. The determination
7 by that entity shall be final and binding on both the claimant
8 and the department. The costs of adjustment services provided
9 by the entity shall be borne equally by the department and the
10 claimant unless the damages established equal or exceed those
11 estimated by the claimant in its claim, in which event the
12 costs shall be the sole obligation of the department. The
13 landowner or lessee shall have the burden of providing to the
14 adjusting entity sufficient credible evidence to substantiate
15 the cause and extent of the damage claimed. Payment to the
16 landowner or lessee of an adjusted claim shall be made pursuant
17 to this section.

18 H. No claim shall be made under this section for
19 damages occurring more than three months prior to the effective
20 date of this section.

21 I. Neither the department nor any other
22 instrumentality of the state shall be obligated to compensate
23 for depredation damages in any cumulative amount exceeding the
24 funds available and appropriated for such payments and the
25 costs of providing interventions annually available in the big

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1 game depredation damage fund.

2 J. The department may enter into leases of forage
3 with requestors for the reasonable value of growing and
4 harvested crops consumed by covered species. A forage lease
5 payment shall be reduced by the amount of insurance proceeds
6 received by the claimant for loss or damage to growing or
7 harvested crops, which loss occurred during the forage lease
8 term. Leases shall not be entered into if the landowner or
9 lessee has received state or federal habitat improvement funds
10 solely intended to benefit wildlife pursuant to this section.
11 The terms of a forage lease shall include an obligation by the
12 lessee to continue agricultural activity on the leased land at
13 least equivalent to the activities and husbandry prior to the
14 date of the lease.

15 K. The commission shall establish rules to
16 implement the provisions of this section.

17 L. As used in this section:

18 (1) "commission" means the state game
19 commission;

20 (2) "claimant" means a landowner or lessee who
21 files a claim with the department for damages arising out of
22 wildlife depredation;

23 (3) "covered species" means elk, deer,
24 antelope, cranes and geese;

25 (4) "damage" means actual damage to land,

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1 growing cultivated crops, harvested and stored crops, seed
2 crops, fences, irrigation and water supply systems or damage to
3 livestock by predators that is in excess of twenty-year average
4 losses as recorded by New Mexico state university and that is
5 sworn to by the claimant to have occurred;

6 (5) "department" means the department of game
7 and fish;

8 (6) "good cause" means that either the
9 landowner or lessee can document to the satisfaction of the
10 department that:

11 (a) the intervention offered would cause
12 physical damage to persons or property; or

13 (b) the intervention offered will not
14 result in a substantial lessening of the depredation it is
15 intended to affect. In either instance the claim of good cause
16 shall be made in good faith and supported with facts reasonably
17 sufficient to meet either or both of the above criteria;

18 (7) "immediate" means an emergency situation
19 where imminent harm to human life, livestock or family pets is
20 perceived to exist;

21 (8) "landowner" means an individual or entity
22 that holds a verifiable fee interest or interest under a land
23 sale contract in real property in New Mexico;

24 (9) "lessee" means an individual or entity
25 that is in possession of private land under the terms of a

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1 lease, occupancy agreement or other documentation between the
2 lessee and the owner of the land;

3 (10) "livestock" means livestock as defined in
4 Section 77-2-1.1 NMSA 1978;

5 (11) "predator" means bears, cougars or
6 bobcats;

7 (12) "property" means land, growing cultivated
8 crops, harvested and stored crops, seed crops, livestock,
9 fences and irrigation and water supply systems; and

10 (13) "requestor" means a landowner, lessee or
11 the employee or agent of either, who requests the department to
12 provide technical advise or interventions to resolve a
13 degradation problem."